

Office of Chief Counsel
Internal Revenue Service
Memorandum

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CC:ITA:B01:RJGoldstein
POSTF-102238-13

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date: August 23, 2013

to: Teri L. Jackson
Attorney (St. Paul)
(Large Business & International)

from: Susan J. Kassell
Senior Counsel, Branch 1
(Income Tax & Accounting)

subject: POSTF-102238-13

This Chief Counsel Advice responds to your request for assistance dated April 30, 2013. This advice may not be used or cited as precedent.

LEGEND

Taxpayer =
Business =

Business Names =

Date 1 =
Date 2 =
Charity A =
Charity B =
Amount 1 =
Amount 2 =

ISSUE

Whether charitable contributions of inventory made by Taxpayer are “qualified contributions” as defined by Internal Revenue Code § 170(e)(3)(A) and Treas. Reg. § 1.170A-4A(b), eligible for the increased deduction amount provided by I.R.C. § 170(e)(3) (the “enhanced deduction”).

CONCLUSION

Taxpayer’s contributions of wrinkle creams, hair gels, perfumes, hair sprays, hair texturizers, curling irons, hair dyes, nail polishes, epilators, and hair restoration treatments (the “Donated Products”), are not “qualified contributions” that are eligible for the enhanced deduction under I.R.C. § 170(e)(3), because they are not needed for the care of the ill, the needy, or infants under I.R.C. § 170(e)(3)(A)(i) and Treas. Reg. § 1.170A-4A(b)(ii).

FACTS

Taxpayer is a corporation engaged in Business, and it operates under the names of Business Names. During the taxable years ended Date 1 and Date 2, Taxpayer donated various hair care and grooming products to Charity A (formerly known as Charity B). Charity A is an organization described in I.R.C. § 501(c)(3) that is not a private foundation as defined in I.R.C. § 509(a) and is exempt under I.R.C. § 501(a). Charity A accepts donations of goods and distributes them to a network of nonprofit organizations in the United States and abroad. Charity A acknowledged receipt of Taxpayer’s donations by providing Taxpayer with several letters that included the representations required under I.R.C. § 170(e)(3) and the regulations thereunder.

You have requested our advice as to whether the Donated Products are eligible for the enhanced deduction under I.R.C. § 170(e)(3). Exam is not challenging the eligibility of soaps, shampoos, and conditioners as “qualified contributions” for purposes of I.R.C. § 170(e)(3). Therefore, this memorandum addresses only Taxpayer’s contributions of the Donated Products.

LAW AND ANALYSIS

I.R.C. § 170(a)(1) allows a deduction for a charitable contribution made within the taxable year, provided the deduction is verified under regulations prescribed by the Secretary. If the contribution is made in property other than money, the amount of the contribution generally is the fair market value of the property at the time of the contribution. However, I.R.C. § 170(e)(1) requires a reduction in the amount of the contribution for certain donations of appreciated property, including inventory, that if sold on the date of the contribution would not give rise to long term capital gain. See generally Lucky Stores, Inc., v. Commissioner, 105 T.C. 420, 426-27 (1995). Consequently, the amount of the deduction for a contribution of inventory generally is limited to the lesser of the fair market value or basis of the inventory.

I.R.C. § 170(e)(3) provides a special rule allowing an enhanced deduction in the case of “qualified contributions” of inventory. The enhanced deduction applies only to donations of property that are used by the donee solely for the care of the ill, the needy, or infants. I.R.C. § 170(e)(3)(A)(i). Any portion of the donated property that is not used for the care of the ill, the needy, or infants is not a qualified contribution under I.R.C. § 170(e)(3). See Treas. Reg. § 1.170A-4A(a) and (b)(2)(ii)(A).

Congress enacted I.R.C. § 170(e)(3) in response to a decline in donations of food, clothing, medical equipment and supplies, and other necessary items for the needy and disaster victims. S. Rep. No. 94-938, pt. 2, at 78-79 (1976); Staff of the Joint Comm. on Internal Revenue Taxation, 94th Cong. 2d Sess., Description of Provisions Listed for Further Hearings by the Committee on Finance on July 20, 21, and 22, 1976, at 91 (Comm. Print 1976); Staff of the Joint Comm. on Taxation, 94th Cong., General Explanation of the Tax Reform Act of 1976, at 672-73 (1976). The legislative history is clear that Congress intended only “certain types” of inventory property to qualify for the enhanced deduction. Congress did not extend I.R.C. § 170(e)(3) to donations of all inventory, but rather only to donations of those goods that serve a specific purpose – helping the ill, the needy, and infants. Therefore, the limiting language of I.R.C. § 170(e)(3)(A) provides that the enhanced deduction applies “only if” the specific requirements enumerated therein are satisfied.

Taxpayer has not demonstrated that the Donated Products are used to care for the ill, the needy, or infants. In an IDR, the Service requested “a detailed description of the care provided or the existing need or needs that are alleviated or satisfied” by the Donated Products. Taxpayer responded by stating only that the Donated Products allow Charity A to carry out its charitable purpose. Contributions of goods that allow a charity to carry out its charitable purpose but are not needed for the care of the ill, the needy, or infants do not qualify for the enhanced deduction under I.R.C. § 170(e)(3).

Treas. Reg. § 1.170A-4A(b)(2)(ii)(B) defines an ill person as a person who requires medical care within the meaning of Treas. Reg. § 1.213-1(e). Treas. Reg. § 1.170A-4A(b)(2)(ii)(C) defines care of the ill as the alleviation or cure of an existing illness and includes care of the physical, mental, or emotional needs of the ill. The Donated Products are not medical in nature, they serve no medical purpose, and they do not alleviate or cure an existing illness. Therefore, Taxpayer has not shown that the Donated Products are needed for the care of the ill.

Treas. Reg. § 1.170A-4A(b)(2)(ii)(F) defines an infant as a minor child as determined under the laws of the jurisdiction in which the child resides. Treas. Reg. § 1.170A-4A(b)(2)(ii)(G) defines care of an infant as the performance of parental functions and provision for the physical, mental, and emotional needs of the infant. The Donated Products do not satisfy a bona fide need of infants. The Donated Products are luxury items rather than necessities of life. Therefore, Taxpayer has not shown that the Donated Products are needed for the care of an infant or minor child.

Treas. Reg. § 1.170A-4A(b)(2)(ii)(D) defines a needy person as a person who lacks the necessities of life, involving physical, mental, or emotional well-being, as a result of poverty or temporary distress. Examples of needy persons in the regulation include a person who is financially impoverished as a result of low income or lack of financial resources, a person who temporarily lacks food or shelter (and the means to provide for it), a person who is the victim of a natural disaster (such as fire or flood), a person who is the victim of a civil disaster (such as a civil disturbance), a person who is temporarily not self-sufficient as a result of a sudden and severe personal or family crisis (such as a person who is the victim of a crime of violence or who has been physically abused), a person who is a refugee or immigrant and who is experiencing language, cultural, or financial difficulties, a minor child who is not self-sufficient and who is not cared for by a parent or guardian, and a person who is not self-sufficient as a result of previous institutionalization (such as a former prisoner or a former patient in a mental institution). Treas. Reg. § 1.170A-4A(b)(2)(ii)(E) defines care of the needy as alleviation or satisfaction of an existing need. Since a person may be needy in some respects and not needy in other respects, care of the needy must relate to the particular need that causes the person to be needy.

The Donated Products have no relation to alleviating or satisfying a “necessity of life” such as the need for food, clothing, or shelter (or other basic needs). A person who cannot afford the Donated Products may be needy, but the Donated Products do not relate to the specific need that caused the person to be needy (such as lack of financial resources, for example). See Treas. Reg. § 1.170A-4A(b)(2)(ii)(E) (“a person whose temporary need arises from a natural disaster may need temporary shelter and food but not recreational facilities”). The Donated Products are luxury items rather than “necessities of life;” they do not alleviate or satisfy an existing need within the meaning of Treas. Reg. § 1.170A-4A(b)(2)(ii)(E). Therefore, Taxpayer has not shown that the Donated Products are for the care of the needy.

Accordingly, the contributions of the Donated Products do not qualify for the enhanced deduction under I.R.C. § 170(e)(3).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please contact Ron Goldstein at (202) 622-5020 if you have any further questions.